IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1710 OF 1992

Eknath M. Shingade ..Petitioner

versus

State of Maharashtra & Ors. ..Respondents

Mr. J. G. Reddy h/f. Mrs. S. Mutalik for the Petitioner.

Mr. A. P. Vanarase, AGP for the Respondents No.1 to 3 - State.

CORAM : D. G. DESHPANDE, J.

DATE : 14TH SEPTEMBER, 2006

ORAL ORDER :

1. Heard Advocate for the Petitioner and learned AGP for the Respondents No.1 to 3 - State.

2. This is suo-moto writ petition on the basis of the letter written by Eknath M. Shingade - Petitioner herein, to the Chief Justice. His main grievance was that he was dismissed from service as a Head Master on the false allegation of rape. He has filed a suit vide R.C.S. No. 476 of 1991 before the Civil Judge, Senior Division at Nasik.

He has also applied for interim order vide Exhibit ’5’. In the meantime there was a circular that all the disputes relating to the Government servants shall stand transferred to MAT, Mumbai. The said Eknath considering himself as a Government servant expected the court to pass appropriate orders of transferring the suit to MAT. But when the court (Vth Joint Civil Judge, Senior Judge, Nashik) heard the matter on Exhibit ’5’ for interim orders, the court not only rejected his application for interim order but also dismissed the suit for want of jurisdiction. Therefore, he wrote a letter complaining to the Chief Justice of injustice caused to him.

3. The Chief Justice then directed the Registrar to find out the legal position in this regard and Additional Registrar & O.S.D. submitted his report stating therein that the court was not justified in dismissing the suit but the plaint should have been returned to the Plaintiff for presentation to the MAT. Additional Registrar also opined that the order of return of plaint is appealable under Order 43, Rule 1 of the Civil Procedure Code, but since the applicant has not

preferred Appeal, his application to the Chief Justice can be treated as a Revision and appropriate orders be passed.

4. This Court has appointed Mrs. Suhasini Mutalik as amicus curiae to assist the court on behalf of Eknath - the petitioner. Mr. J. G. Reddy argued on her behalf, today. He produced order of the Court passed on Exhibit ’5’ about rejection of the application and in the same Order the court held that the court has no jurisdiction to try the litigation, a separate order be passed on Exhibit ’1’. That order was ultimately dismissal of the suit.

5. On the face of it, when the court was deciding application under Section 5 for temporary relief, the court should have put the Plaintiff to notice that it is going to consider the question of jurisdiction and should have heard the plaintiff and/or his Advocate in that regard.. Secondly, if the court had no jurisdiction to entertain service matters in view of the constitution of the MAT, the court should have rejected the plaint and should not have dismissed the suit. It is clear that dismissal

of the suit has resulted in serious miscarriage of justice to the Plaintiff - Eknath. Though, it is equally true that the Plaintiff - Eknath could have challenged that order by filing Appeal before the appropriate Forum. He did not do so, may be due to his illiteracy, or non - availability of funds or for other viable reasons. The fact remains that dismissal of the suit has closed all the avenues of the Plaintiff - Eknath, and, therefore, in the interest of justice, impugned order of dismissal of the suit is set aside. Suit is restored to the file of the said court and the Vth Joint Civil Judge, Senior Division, Nashik, is directed to inform the Plaintiff - Eknath of this order and send his plaint to MAT along with all the documents and also give intimation to the Plaintiff - Eknath regarding the date of his appearance before the MAT, which shall be not less than three weeks after the receipt of notice of the lower court to the Plaintiff - Eknath. MAT will thereafter consider the case of the Plaintiff - Eknath on its own merits without being influenced by any of the observations of this Court. Petition is allowed. Rule is made absolute accordingly.

(D.G. DESHPANDE, J.)